



ఆంధ్రప్రదేశ్ రాజపత్రము

THE ANDHRA PRADESH GAZETTE

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G.590

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

ADDITIONAL SENIOR CIVIL JUDGE'S COURT : TENALI

Friday, this the 30th day of June, 2023

Insolvency Petition No. 19 of 2022

Between

Myla Tirumala, W/o.Sambasiva Rao, Hindu, aged about 38 years, Sarees and cloth business, R/o.H.No.13-7-9, Gopidesi vari street, Pinapadu, Tenali.

...Petitioner

And

1. Kode Venkateswara Rao, S/o.Chandraiah, Hindu, aged about 68 years, Retired employee, R/o.Sri Sai Apartment, Ganganammapet, Tenali, Guntur District.

2. Kareti Chandrasekhar S/o.Venkateswarlu, Hindu, aged about 61 years, retired B.S.N.L.Employee, r/o.Nannapaneni Nagar, back side of Donka Road, Yadla Lingaiah colony, Tenali JCJC.

3. Doguparthi Rajesh S/o.Sambasiva Rao, Hindu, aged about 40 years, gold worker, R/o.Jaggadiguntapalem, Tenali Mandal, Guntur District.

4. Myla Gopi S/o.Chenchaiah, Hindu, aged about 38 years, Chit Fund business, R/o.near Government school, Chempadu road, Vemuru, Vemuru Mandal, Guntur District.

...Respondents

This Insolvency Petition is coming on 23.06.2023 before me for hearing in the presence of Sri R.Subba Rao, Advocate for Petitioner and of Sri Sk.Kalesha, Advocate for Respondent No.2 and respondents 1,3,4 remained set ex parte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: O R D E R ::

1. This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner as insolvent and for other reliefs.

2. The case of the petitioner in a nutshell is as follows:

The petitioner used to do retail sarees and cloth business by purchasing the cloths and sarees and used to sell on streets, payable on instalments and in view of said process, some of the debtors payable to her failed to pay the amounts and she could not discharge the amounts to her creditors where she purchased goods. To discharge some debts, she borrowed amounts from others for higher rate of interest and due to loss in her business, she failed to discharge the debts and she paid some interest amounts to some of the respondents and others at higher rate of interest and the respondents are pressing her to discharge their debts. She suffered continuous losses for the years together and as she could not do the business. Some of the respondents also obtained her signatures on empty promissory notes and non-judicial stamp papers and cheques. She could not repay the said amounts to the respondents due to heavy loss but the respondents pressurized her to pay the amounts. She did not possessed any movable and immovable properties except mentioned in C-schedule. The first respondent also filed CC.No.793/2020 on the file of Addl.Munsiff Magistrate Court, Tenali under section 138 of N.I.Act and the same is pending. No properties were alienated by her within three months prior to the filing of the petition and the petitioner has not filed any similar petition before any Courts. Hence, this petition is filed as she unable to clear the debts to respondents 1 to 4.

3. The respondents 1, 3 and 4 remained exparte to this proceedings. Only respondent 2 is contesting this petition. Respondent No.2 filed counter and denied material allegations as false and had inter-alia contending as follows :

The petitioner did not assign any valid or cogent reasons in the petition to obtain reliefs prayed for in this petition and on the other hand, she is guilty of suppression of facts about possession of movable and immovable properties in her own name and also ownership of site in an extent of 36 sq.yards and daba house there in situated at Gopidesvari Street, Pedapadu, Tenali town, Guntur District, which is under mortgage. The petitioner along with her husband and father-in-law executed an unpossessory mortgage deed dated 12.01.2015 in favour of Karet Chandra Sekhara Prasad Babu of Tenali town. But the same is not shown in this

petition. She has capacity to pay the amount due to the respondents and this petition is filed only to avoid the payment of debts, therefore, he prayed for dismissal of the petition.

4. During the course of trial, petitioner herself examined as PW1 and no documents were marked through her. On behalf of the respondent No.2, he himself examined as RW1 and son of RW1 is examined as RW2 and no documents were marked through him.

5. Heard. Perused the material available on record.

6. The learned counsel for the petitioner submitted that the evidence of PW1 and admission of RW1 and RW2 clearly shows that the petitioner has no valuable assets to discharge the debts contracted from the respondents 1 to 4. He further submits that the respondent fails to submit any material to say that the petitioner is having house property as contended by them. Therefore, the petitioner is entitled for the relief as prayed for. Per contra, the learned counsel for the respondents vehemently contends that the evidence placed by them clearly shows that the petitioner is having house property and she filed this petition by suppressing the material facts and as such, the same is liable for dismissal.

7. The petitioner as PW1 deposed by reiterating the averments in the petition and with a prayer to declare her as insolvent. The respondent No.2 was examined as RW1 and he also deposed about the existence of property in the name of petitioner and about execution of mortgage deed in favour of one Karet Chandra Sekhara Prasad Babu and thereby prayed for the dismissal of the petition. He got examined son of Karet Chandra Sekhara Prasad Babu as RW2. He deposed about the execution of mortgage deed by the petitioner along with her husband and son in his favour.

8. Now the point for determination is:

Whether the petitioner can be adjudicated and to declare as an insolvent as prayed for?

9. POINT :

I) Sec.10 of the Provincial Insolvency Act specifies the conditions on which the debtor may present petition. A debtor shall be entitled to present in Insolvency Petition only:-

1. When he is unable to pay his debts; or
2. When his debts are more than his assets; or
3. When he is under arrest or imprisonment in execution of the decree of any Court for the payment of money ; or
4. When an order of attachment in execution of such a decree has been made, and is subsisting against his property.

ii) The case of the petitioner is that previously she had done cloth business by purchasing the cloths and used to sell in the streets and she incurred losses in the business. Admittedly no documentary evidence submitted by her in support of her contention that she done the business and sustained losses. She stated in her cross examination that she is not having any shop and she used to purchase worth of Rs.70,000/- to Rs.80,000/- in each trip and used to get profit of Rs.5,000/- to Rs.10,000/-. It is suggested to her that she used to get Rs.40,000/- to Rs.50,000/- per month. Therefore, there is no dispute with regard to the avocation of the petitioner that she done business as respondents suggested to her the profit in her business. She sated in her cross examination that initially her sarees business was good but she sustained loss due to Covid-19 and the purchase bills are not available with her. Therefore, the above said aspect is not material even the petitioner did not choose to file any documentary evidence that she has done the business. It is an admitted fact that there is no whisper in pleadings and her evidence about the quantum of loss sustained by her in her business.

iii) Further the case of the petitioner is that she borrowed the amounts from respondents 1 to 4 to the tune of Rs.6,80,000/- and now she is unable to pay the debts. There is no dispute with regard the debt contracted from the respondents 1, 3 and 4 as they remained ex parte to this proceedings and not disputed the above said aspect in any manner. The respondent No.2 got admission by way of suggestion that she executed promissory note in his favour by borrowing amounts from him. The only contention raised by the respondent No.2 is that the petitioner

is having property bearing D.No.13-7-9 at Gopidevi vari street, Tenali that was suggested to PW1 and she denied the same.

iv) The respondent No.2 as RW1 deposed in his chief examination that the petitioner is having house property in her name and same is under mortgage in favour of Kareti Chandra Sekhara Prasad Babu of Tenali town. He admitted in his cross examination that he did not file any documentary proof to show that the petitioner is having RCC building. Though he stated in his cross examination that he is having documentary proof to show that the petitioner mortgaged her property and he can file the same before this Court, he did not choose to file the same. However, he got examined the son of said Kareti Chandra Sekhara Prasad Babu namely Kranti Kumar and he deposed that the petitioner executed a mortgage deed unregistered possessory agreement on 12.01.2015 in his favour by the petitioner, her husband and her son. He admitted in his cross examination that the petitioner filed insolvency petition against his father and he was not shown as a respondent and he did not file unregistered possessory agreement dated 12.01.2015. He further stated in his cross examination that the petitioner also gave signed blank cheque in his name in the year 2015 and no suit was filed against her. In fact, the case of the respondent is that the second respondent obtained unregistered possessory mortgage deed from the petitioner and her family whereas the RW2 shows that the said document was executed in his favour. There is no consistency in the case of the respondent No.2 between his pleadings and evidence. More over, there is no whisper evidence in the RW2 about the quantum of debt contracted by the petitioner under the said mortgage deed. Though the respondents did not make a venture to submit the said mortgage deed before this Court but it is not impossible for them to submit the documentary proof either from municipal authorities or otherwise that the petitioner is having house property. In absence of any such evidence which is required to be proved by the documents, this Court cannot rely when inconsistent version of respondents with regard to the ownership of the property by the petitioner to say that she exclude the same in mentioning the schedule and to treat it as a suppression of material fact. Therefore, the respondents fails to produce any cogent evidence to establish that the petitioner is having house property and same was not included in the schedule given. Therefore, the evidence placed by the petitioner establishes that she became due of Rs.6,80,000/- as

described in the schedule A property and her inability to pay the debt amount as she is having non-valuable C schedule property worth of Rs.600/-. In view of the above said circumstances, the petitioner establishes her case that she is unable to pay the debts contracted by her and she is entitled to adjudicate as insolvent and this petition is to be allowed. Hence, this point is answered in favour of the petitioner.

10. In the result, the petition is allowed without costs and the petitioner is adjudicated as insolvent and he shall apply for discharge within six months. The properties which include 'C' schedule are vested with the Official Receiver. Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Dictated to the Personal Assistant, transcribed by her, corrected and pronounced by me in open Court, this the 30th day of June, 2023.)

MARUPU SREEDHAR,
Additional Senior Civil Judge,
Tenali

Appendix of Evidence
Witnesses Examined

For Petitioner:

PW1- Myla Tirumala

For Respondent:

RW1 – Karetu Chandrasekhar
RW2 – Karetu Kranthi Kumar

Exhibits Marked

Nil

MARUPU SREEDHAR,
Additional Senior Civil Judge,
Tenali

[Dis No - 533]